

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARY W. CHILDRESS,

Petitioner,

v.

CIVIL ACTION NO. 04-AA-81

QUETTA MUZZLE, ACTING COMMISSIONER OF
WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS,
JAMES DILLON, CHAIRMAN, BOARD OF REVIEW, BUREAU
OF EMPLOYMENT PROGRAMS

and

CLEARON CORP.,

Respondents

ORDER

This action comes before the Court on a Petition for Appeal filed by petitioner pursuant to West Virginia Code 21A-7-17. Petitioner seeks reversal of a final decision of the Unemployment Compensation Board of Review, hereinafter the Board, dated June 9, 2004, hereinafter Final Order, denying the petitioner unemployment compensation benefits.

Upon review of the Petition for Appeal, the administrative record, the Final Order, the briefs of counsel, and the pertinent law, the Court is of the opinion, as more fully set forth below, that the Final Order should be reversed and the petitioner awarded unemployment compensation benefits. Specifically, the Court finds that the employer was the moving party in the separation of the petitioner from employment and the petitioner therefore left work voluntarily but with good cause involving fault on the part of the employer.

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CATLYN S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

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FINDINGS OF FACTS

1. The petitioner was employed by Clearon Corp, hereinafter Clearon or employer, until November 30, 2003. He worked as a maintenance technician at the employer's South Charleston, West Virginia facility.

2. Based on several factors, the primary of which was foreign competition, the employer made a decision to reduce its operating costs in several ways, including reducing the number of employees. Employees were told that the 20 to 25 jobs would be eliminated.

3. In order to reduce the number of employees, the employer initiated an early retirement income plan. The plan provided for enhanced retirement benefits. It included a lump-sum payment and removal of the early retirement reduction penalty. In addition, the employer announced the outsourcing of substantial work in the maintenance department. Vacation plans were altered, the employer's match to the 401-k plan was suspended, bank days for 2004 were eliminated, holiday carryover was eliminated and changes were made in the disability policy. After a meeting of employees in October, 2003, the petitioner decided to accept the early retirement offer.

4. The Unemployment Compensation Division of the Bureau of Employment Programs issues Local Office Letters to set forth agency policy. On April 10, 2002, the agency issued Local Office Letter 2200 which sets forth the agency policy on employer-initiated voluntary separations. In determining whether petitioner was disqualified for benefits, the agency applied Local Office Letter 2200 and concluded that petitioner had voluntarily left his employment with good cause involving fault on the part of the employer. Petitioner was awarded unemployment compensation benefits by the agency.

CONCLUSIONS OF LAW

1. The essential facts of this case are not in dispute. The issue involves an interpretation of the applicable statute, West Virginia Code 21A-6-3(1) and an interpretation of Local Office Letter 2200, a policy of the agency charged with administering and enforcing the unemployment law. These are questions of law, not fact. Accordingly, the clearly wrong standard is not applicable and the decision of the Board is reviewed de novo. Patton v. Gatson, 207 W.Va. 168, 531 S.E.2d 167 (1999); Adkins v. Gatson, 192 W.Va. 561, 435 S.E.2d 395 (1994).

2. West Virginia Code 21A-6-3(1) provides an individual shall be disqualified for benefits if he voluntarily leaves his employment without good cause involving fault on the part of the employer. The interpretations that agencies make of the statutes they administer should be accorded deference so long as they are consistent with the statute. See Syllabus Point 4, State of West Virginia ex rel ACF Industries, Inc. v. Vieweg, 204 W.Va. 525, 514 S.E.2d 176 (1999). Further in Martin v. Randolph County Board of Education, 195 W.Va. 297, 465 S.E.2d 399 (1995), the Court noted that "it is by now common place that when faced with a problem of statutory construction, the circuit court and this court should give some deference to the interpretation of the officer who is charged with statutory implementation." Applying that principle, the court finds that Local Office Letter 220 is a policy of the agency of the agency charged with administering the statute and that the policy set forth in Local Office Letter 2200 is not contrary to West Virginia Code 21A-6-3(1). The phrase "voluntarily without good cause involving fault on the part of the employer" is not defined in the statute. Local Office Letter 2200 states the agency's interpretation of that phrase in the context of an employer initiated voluntary separation plan. The employer is clearly the moving party in the separation of the petitioner from his

employment. It was the employer that announced the job reduction plan, it was the employer that advised the petitioner he could apply for the separation plan and it was the employer that had to approve the petitioner's participation in the plan. It is clear that the petitioner would not have left his employment in the absence of the offering of the separation plan which concededly was based on a lack of work.

3. Local Office Letter 2200 was promulgated to establish a policy to address situations where an employer initiates a separation of employment by offering a voluntary separation plan to employees. The elements necessary to receive benefits under that policy are: (1) an employer-initiated plan to downsize; (2) the establishment of the voluntary separation package; and (3) the election by an employee to accept that plan. Those elements have been met in this case. When read in its entirety, the policy plainly permits an award of benefits to petitioner. Under Local Office Letter 2200 the petitioner left work, but with good cause involving fault on the part of the employer.

4. The decision of the Board of Review is contrary to the statute and Local Office letter 2200 and accordingly is reversed. It is **ORDERED** that the petitioner is eligible for benefits and not disqualified from receiving benefits. The petitioner left work voluntarily with good cause involving fault on the part of the employer.

5. The objection and exception of respondent Clearon to all of the foregoing is duly noted and preserved.

It is **FURTHER ORDERED** that this case is dismissed and stricken from the docket of the Court

Entered this 9th day of October, 2006.

11/17/06
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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 13
DAY OF March 2007
Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PAUL ZAKAIB, JR., CIRCUIT JUDGE

RECORDED